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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2013-621

13 **MOYENDA AISHA FENNEL**  
14 **456 North 19th Street**  
15 **San Jose, CA 95112**

**A C C U S A T I O N**

16 **Registered Nurse License No. 598851**

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
22 Consumer Affairs.

23 2. On or about May 1, 2002, the Board of Registered Nursing issued Registered Nurse  
24 License Number 598851 to Moyenda Aisha Fennell (Respondent). The Registered Nurse License  
25 was in full force and effect at all times relevant to the charges brought in this Accusation and will  
26 expire on November 30, 2013, unless renewed.

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**JURISDICTION**

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

**STATUTORY/REGULATORY PROVISIONS**

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualification.

9. California Code of Regulations, title 16, section 1444, states, in pertinent part that a conviction or act shall be considered to be substantially related to the qualifications, functions or

1 duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness  
2 of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.  
3 Such convictions or acts shall include but not be limited to the following:

#### 4 **DRUGS**

5 10. Fentanyl is used to control breakthrough pain. It is a Schedule II controlled substance  
6 pursuant to Health and Safety Code section 11055, subdivision (c)(8) and a dangerous drug  
7 pursuant to Business and Professions Code section 4022.

#### 8 **COST RECOVERY**

9 11. Section 125.3 of the Code provides, in pertinent part, that the Board may request the  
10 administrative law judge to direct a licensee found to have committed a violation or violations of  
11 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
12 enforcement of the case.

#### 13 **FIRST CAUSE FOR DISCIPLINE**

##### 14 **(Conviction of Crimes)**

15 12. Respondent has subjected her license to disciplinary action under sections 2761,  
16 subdivision (f), and 490, in that she was convicted of the following crimes that are substantially  
17 related to the qualifications, functions, and duties of a registered nurse:

18 A. On or about September 9, 2010, in Santa Clara County Superior Court, Case No.  
19 C1077899, entitled *People v. Moyenda Aisha Fennell*, Respondent was convicted on her plea of  
20 nolo contendere of violating Penal Code sections 484-488 (petty theft).

21 The circumstances of the crime are that on or about May 8, 2010, Respondent stole items  
22 from Walmart, in San Jose, California. Respondent was sentenced to two years probation, ten  
23 days in jail, required to pay fines and restitution, and to stay away from the Walmart store.

24 B. On or about September 9, 2010, in Santa Clara County Superior Court, Case No.  
25 C1081169, entitled *People v. Moyenda Aisha Fennell*, Respondent was convicted on her plea of  
26 nolo contendere of violating Penal Code sections 484-488 (petty theft).

27 The circumstances of the crime are that on or about May 15, 2010, Respondent stole items  
28 from Fry's Electronics, in San Jose, California. The San Jose Police Officer who conducted the

1 arrest, observed five vials of Fentanyl Citrate in Respondent's purse. Respondent was sentenced  
2 to two years probation, ten days in jail, required to pay fines and restitution, and to stay away  
3 from the Fry's Electronics store.

4 C. On or about December 29, 2011, in Santa Clara County Superior Court, Case No.  
5 C1121972, entitled *People v. Moyenda Aisha Fennell*, Respondent was convicted on her plea of  
6 guilty of violating Vehicle Code section 14601.1, subdivision (a) (driving while license  
7 suspended).

8 The circumstances of the crime are that on or about October 3, 2011, Respondent drove a  
9 vehicle at a time when her license was suspended. Respondent was required to pay fines and  
10 fees.

11 D. On or about September 9, 1999, in Santa Clara County Superior Court, Case No.  
12 C9914479, entitled *People v. Moyenda Aisha Fennell*, Respondent was convicted on her plea of  
13 guilty of violating Welfare and Institutions Code section 10980, subdivision (c)(2) (failure to  
14 disclose additional income while on welfare).

15 The circumstances of the crime are that on or between March 1, 1996 and February 28,  
16 1997, Respondent worked while receiving welfare benefits and unlawfully failed to report the  
17 additional income. Respondent was placed on two years probation, required to pay fines and  
18 fees, and to perform 125 hours of community service.

19 E. On or about June 2, 1998, in Santa Clara County Municipal Court, Case No.  
20 B983956, entitled *People v. Moyenda Aisha Fennell*, Respondent was convicted on her plea of  
21 nolo contendere of violating Penal Code sections 484-488 (petty theft).

22 The circumstances of the crime are that on or about May 7, 1998, Respondent stole clothes  
23 from a department store. Respondent was sentenced to two years probation, required to pay fines  
24 and restitution, and required to take and complete the Western Corrections and Shoplifters  
25 Alternatives Program.

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13. Respondent has subjected her license to disciplinary action under section 2761, subdivision (a), on the grounds of unprofessional conduct, by virtue of the convictions set forth in paragraph 12, above.

14. On or about August 18, 2010, Respondent was accepted into the Board's Diversion Program. On or about March 3, 2011, Respondent was terminated from the Diversion Program for failure to comply with the provisions of her rehabilitation plan.

WHEREFORE, Complainant requests that a hearing be held on the matters alleged here, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 598851, issued to Moyenda Aisha Fennell;

2. Ordering Moyenda Aisha Fennell to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED:

February 19, 2013

*Louise R. Bailey*  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer

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Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
*Complainant*

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